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REPORTS OF COMMITTEES

OF THE

HOUSE OF REPRESENTATIVES

FOR THE

THIRD SESSION OF THE FORTY-SECOND CONGRESS.

1872-'73.

IN THREE VOLUMES.

Volume 1....No. 1 to No. 97, except Nos. 77, 78, (parts 1 and 2,) 81, 82, and 95.
Volume 2....Nos. 77, 78, (parts 1 and 2,) 81, 82, and 95.
Volume 3....No. 98, Investigation of Indian frauds.

WASHINGTON:
GOVERNMENT PRINTING OFFICE.
1873.

42D CONGRESS, 3d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 81.

INQUIRY AS TO IMPEACHMENT IN CREDIT MOBILIER TESTIMONY.

FEBRUARY 24, 1873.—Ordered to be printed.

Mr. B. F. BUTLER, from the Committee on the Judiciary, submitted the following

REPORT:

The Committee on the Judiciary, to which was referred the resolution of the House passed February 20, 1873, in the words following:

Resolved, That the testimony taken by the committee of this House of which Mr. Poland, of Vermont, is chairman, be referred to the Committee on the Judiciary, with instructions to inquire whether anything in such testimony warrants articles of impeachment of any officer of the United States not a member of this House, or makes it proper that further investigation should be ordered in his case—

having fully considered the matter, pray leave to submit the following report:

It is apparent that this resolution brings before the House subjects of the gravest moment, involving most important considerations of fact and law thereto applicable. There can be no more delicate and sometimes painful duty devolved upon the House of Representatives and no higher prerogative is given to it by the Constitution than its power to be exercised as the grand inquest of all the nation by presenting articles of impeachment against civil officers of the Government. The very fact that one is accused who has so far possessed the confidence of his fellow-citizens the Executive, as to have had the interest of the Government confided to his charge as a civil officer of the United States, brings always before the House derelictions of duty, which, if found, involves consequences to the individual, as well as to the country, of the most serious character. Wherefore, your committee have entered upon this subject with the intent to give it the fullest deliberation possible to us, in the waning hours of the session, and for that purpose they have deliberated upon it in special sessions.

The resolution it will be observed refers to your committee "the testimony taken by the committee of this House of which Mr. Poland is chairman, with instructions to inquire whether anything in such testimony warrants articles of impeachment of any officer of the United States *not* a member of this House, or makes it proper that further investigation should be ordered in his case."

The question first presented is the conduct of what civil officers of the United States is brought into question by this testimony?

Your committee take leave to observe that a member of the House of Representatives is not an officer of the United States to whom the constitutional remedy of impeachment applies. This was long ago decided

in Blount's case by the Senate of the United States where an attempt was made to impeach him because of alleged offense. Your committee find but two civil officers of the class liable to impeachment whose acts are called in question by the testimony submitted to us. One, the Vice-President of the United States, the other, Mr. Brooks, late Government director of the Union Pacific Railroad, who was an officer provided for by law, and appointed by the President. The first is still in office; the second has long since ceased to be such officer.

The case of Mr. Brooks, by the terms of the resolution, does not seem to be before us, as he is now a member of the House. If there were any doubt upon that subject your committee would resolve it by asking instruction of the House upon that point; but the fact that the conduct of Mr. Brooks in this regard was at the time of the passage of the resolution, and now is before the House upon a report of another committee, recommending his expulsion from the House because of the transactions set forth in the evidence referred to us, would seem to furnish a conclusive reason for the exception made in his case, and determine all doubts upon the matter. Wherefore your committee have given no further consideration to the evidence in that behalf.

For the purpose of applying the precedents and principles of law which regulate the presentation and trials of impeachment, your committee have found it convenient, in the case of the Vice-President, to assume, without expressing any opinion upon the facts to be found therein that the evidence proves all that can be possibly claimed to be inferred from it because of his being a holder directly or indirectly, and receiving the profits thereof of the stock of a corporation known as the Credit Mobilier of America, while a member of Congress. Giving, therefore, as in case of a demurrer to evidence, every possible intendment against Mr. Colfax, it would seem that it might be claimed from the evidence than that in the winter of 1867–'68 he became the owner by purchase, at par and interest on that value, of certain stock in the Credit Mobilier Company from Oakes Ames, when that stock was known to both to be worth very much more than par, and that he received the profits or dividends while Ames held the stock and still holds the same in trust for him, although the beneficial interest in the stock, if not the legal title, remains in Mr. Colfax down to to-day. That during the sessions of Congress of 1867–'68 and 1868–'69, while holding such interest in the stock, Mr. Colfax, as a member of the House of Representatives and its Speaker, presided over its deliberations. During which session certain matters of legislation in which his personal interest as such stockholder were involved, were attempted to be advantageously or injuriously affected by legislative action.

The Credit Mobilier of America and its connection with the Union Pacific Railroad, and the conjoint interests of the stockholders of both, have become so far matters of public notoriety, that your committee do not deem it necessary to go into any recital of its history in order to an understanding of their report. It may however, be convenient to have on record, if this report should ever be drawn into precedent, that the Credit Mobilier was a State corporation, organized by the principal stockholders of the Union Pacific Road to receive from themselves the contract of building that road, which had obtained by legislative grant large endowments of lands and bonds of the United States to be held in trust only for the construction and equipment of the road, large amounts of which, to a considerable number of millions of dollars, the stockholders of the Pacific Road, through the intervention of the Credit Mobilier and other devices had divided among themselves and confed-

erates as pretended profits of building the road, while, in fact, they took to their own individual profit and use these very large sums belonging to the Government of the United States, and intrusted to them for a specific use only, in violation of that trust. Drawing such inferences as a jury might from the evidence if unexplained, it may be claimed that the stock was sold to Mr. Colfax to influence him as a member and Speaker of the House, and that it did so influence his action in favor of the Union Pacific Road, and incidentally in his own favor as a stock and bond holder in both companies.

Your committee lay aside for the purposes of this report anything which might be presented by the accused by way of mitigation of the facts, or which might extenuate in any degree the supposed guilt of the transaction, because we have desired, in examining the question submitted to us, to assume the facts as clearly and broadly against the accused as any inference from the evidence could possibly justify.

Assuming, then, for this purpose, the facts above stated to be proven, several questions of law meet your committee upon the threshold of the inquiry with which they are charged, "whether anything in such testimony warrants articles of impeachment against" Mr. Colfax as a civil officer.

It is not in dispute that Mr. Colfax became interested in the Credit Mobilier stock before he was elected Vice-President, and whatever were the motives that impelled the transaction they were expected to operate upon him only as a member of the House. Upon the question whether a bribe given to a civil officer to influence his conduct as such officer is an impeachable offense your committee can have no doubt, as it is made such by the express words of the Constitution.

But we are to consider, taking the harshest construction of the evidence, whether the receipt of a bribe by a person who afterward becomes a civil officer of the United States, even while holding another official position, is an act upon which an impeachment can be grounded to subject him to removal from an office which he afterwards holds. To elucidate this we first turn to the *precedents*.

Your committee find that in all the cases of impeachment or attempted impeachment under our Constitution, there is no instance where the accusation was not in regard to an act done or omitted to be done while the officer was in office. In every case it has been heretofore considered material that the articles of impeachment should allege in substance that, being such officer, and while in the exercise of the duties of his office, the accused committed the acts of alleged inculpation.

In the earliest case of impeachment by the House, that of Judge Pickering, of New Hampshire, the accusation was not even for official acts or misconduct, but he was held impeachable by both House and Senate because of his habits of intoxication while in office. But the gravamen of complaint in that case was that those habits and their effect went with him and affected him in the performance of his official duties.

The case of Judge Chase, which brought out, in the prosecution and defense, all the legal learning and ability of the most brilliant bar of our country, was founded wholly upon alleged acts of malfeasance and misfeasance while actually sitting as a judge.

The case of Judge Peck was for an alleged improper order upon the bench to imprison Mr. Lawless for contempt of court.

In the more recent case of the judge of the eastern district of Tennessee, the accusation was that he abandoned his duties and took part in

the rebellion while he was judge, and that official act alone was imputed to him as the offense.

In the still more recent case of a late President of the United States the acts were all imputed to him as such officer of the United States, and the committee who prepared the articles of impeachment were careful to allege each act charged upon him as being done in the exercise of his office.

Your committee have looked with some care to the precedents of impeachment under State constitutions, which are generally framed upon the model of the Constitution of the United States in this regard, and they are not aware of any case wherein an act has been held to be impeachable, or impeachment even attempted, because of it, unless that act so alleged to have been done was in the course of official duty in the office held by the accused, to remove him from which the constitutional remedy was proposed to be applied.

The very recent cases of Judges Barnard and McCunn, of New York, may be claimed to be an exception to this statement in some of the specifications under the articles presented; and, if so, they are the only cases of even limited exception thereto, and of the legal value of that action taken under the state of high political excitement in which those cases were conducted, as precedents the House will judge. To your committee they would seem to serve as warnings, not as guides.

Going back to the Parliament of England, from whose system of parliamentary and common law we have drawn all the principles which have heretofore governed the House and Senate in matters of impeachment, we find no case since the rights of the subject and principles of law and justice have become established, wherein a like rule is not followed.

Your committee are not unmindful that under the claim of omnipotent power by the Parliament of England to make laws, without any substantial negative on the part of the executive, in times of high party feeling the power of impeachment, residing in the Commons, has been used as a punitive power as well as a remedial one, and, in some instances, has extended to offenses alleged to have been committed while the officer was holding another office. But your committee would also call attention to the fact that in some cases impeachment was used as a method of punishing a subject who held no office at all.

In short, when the Commons of England held the power as against the executive, they punished the king's favorites by impeachment, while the Stuarts held the power as against the Commons, they punished the favorites of the people by the Star Chamber. Our Constitution, in the judgment of the committee, has furnished a safeguard against both of these sources of oppression. Both were well known and considered by our fathers in framing the Constitution. Turning to the debates, meager as they are, it will appear that apprehension was felt that impeachment might be used against the citizen as a punitive power, and therefore words strictly guarding the extent to which the judgment might operate find place in that charter, enacting that the punishment of crime should be left to the ordinary tribunals of justice.

Finding so nearly an invariable current of precedent and authority, your committee next turned to see in how far the rule drawn from precedent accords with the plain and immutable principles of law and justice, and also in how far this rule seems to be necessary to shield the officer from what might happen again, as it has happened before, parliamentary oppression under the pressure of high party and other excitement, as well as to protect the rights of the constituency as to an elective

office from being deprived of the services of their officer by his removal by impeachment because of alleged crimes or misdemeanors committed by such officer before the people had chosen him to serve them, and which the electors well might have held not to have been a disqualification of the officer if such charges had been made against him before the election.

Your committee, therefore, are led to inquire, what is the nature and what the objects of impeachment under our Constitution?

Are they punitive or remedial? Or, in other words, is impeachment a constitutional remedy for removing obnoxious persons from office, and preventing their again filling office, or a power given for punishing an officer, while he is an officer, for some crime alleged to have been committed by him before he was such officer? Your committee are very strongly inclined to the opinion that impeachment was intended by the framers of the Constitution to be wholly remedial and not punitive, except as an incident to the judgment, because we find that the Constitution limits the judgment in impeachment by strongly restrictive words:

> Judgment in cases of impeachment shall not extend further than to removal from office and disqualification to hold and enjoy any office of honor, trust, or profit, under the United States.

If such judgment is a punishment for an alleged high crime and misdemeanor, then why does the same article provide for the punishment of the accused a second time for the same offense? Because the words we have quoted are followed by the provision:

> But the party convicted shall, nevertheless, be subject to indictment, trial, judgment, and punishment according to law.

This, therefore, would leave the party who had been removed from office and disqualified from holding office by the judgment of impeachment, if that is a punishment for his crime, to be the second time punished for the same offense, which is contrary to natural justice, against Magna Charta, and is most positively forbidden by the fifth article of amendment to the Constitution.

This article also throws some further light on this subject, because in its nervous language it enacts that

> No person shall be held to answer for a capital or otherwise infamous crime, unless upon presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia when in actual service in time of war or public danger.

Nor does it appear that this view is affected by the exception in section two, article three, of the Constitution, that the trial of all crimes, except in cases of impeachment, shall be by jury; this exception being necessary only to make the instrument consistent in all its parts with itself, as it had already provided that the impeached could be tried by jury for his crime.

Again, we find impeachment to be remedial in this, that it only provides as a further consequence disqualification for office, by which the evil is cured; that thereafter the Government may not have an officer who has so far forgotten his obligations to his official oath, and to his duty as a citizen, as to have been removed from office for high crimes and misdemeanors, again, by vote of the electors or appointment by the Executive, put in place of honor or trust.

We are also inclined to believe that proceedings of impeachment were intended to be remedial and not punitive, because we have already seen that if punitive at all an entirely inadequate punishment has been provided by the judgment; because the very highest offenses are triable by impeachment, such as treason and bribery, and the sentence may be

only removal from an office whose term extends for a few days only, as in the case under consideration.

Again, we are brought to the conclusion that proceedings of impeachment are remedial and not punitive, because, in the case of Judge Pickering, before referred to, impeached for habitual intoxication, the officer was condemned because he became incapacitated for the performance of the duties of his office, and we find that impeachment is the only means known to our Constitution by which a civil officer of the United States, elected by the people, or a judge appointed by the Executive, can be removed from office. And certainly habitual intoxication, while it may not be a crime at common law, or by statute, in a private person, may readily enough seem to be a very high crime and misdemeanor in a high civil officer, wholly incapacitating him from performing all his duties; so much so as to be made by the articles of war a ground for removing an officer from the military service.

Again, your committee are inclined to believe that impeachment is not punitive, because, although an officer may have been tried and convicted of a high crime, yet he may be impeached for that very crime as a remedy for public mischief, and thus, in the converse of the proposition above stated, be twice punished for the same offense.

If the conclusions to which your committee have arrived in this regard are correct, it will readily be seen that the remedial proceedings of impeachment should only be applied to high crimes and misdemeanors committed while in office, and which alone affect the officer in discharge of his duties as such, whatever may have been their effect upon him as a man, for impeachment touches the office only and qualifications for the office, and not the man himself.

It will be seen from a few illustrations that it hardly could have been the intendment of the Constitution that an officer could be impeached for a crime committed by him before his entry into the office from which he is to be removed, because, if this were so, there is no constitutional, and, thus far, no legal limitation as to the time during which he may be held so amenable to such impeachment.

One may have committed a high misdemeanor in his early youth, repented it, outlived it, or may have been pardoned, and, in the language of the law, by that pardon "made as white as snow," and yet, without limitation, years afterwards may be impeached for that crime and deprived of an office by him afterward held, which he has filled to the entire satisfaction of all good men. Indeed, impeachment may in this way be used as a means of removing from the possibility of election a popular candidate whom the people desire to elect to the highest office within their gift, if an opposed House of Representatives chose to impeach for a high misdemeanor of many years' standing and present that to the Senate, who, upon finding the fact, are bound to give judgment, or, if not bound, might be willing to give judgment of disqualification from office forever, from the effect of which judgment no power under the Constitution could relieve; for cases of impeachment are expressly excepted, and no law could avail, nor even the unanimous election of the whole people could give absolution.

Your committee are not unmindful that the report of the learned committee of the House made upon the testimony which has been referred to our consideration, has, in the course of its reasonings, likened the cause for which a member may be expelled to the cause for which an impeachment would lie, and argue that "the close analogy between this power and the power of impeachment is deserving of

consideration, upon the question whether the House may expel a member for acts done by him before his election."

If this analogy is as perfect as that committee evidently supposes it to be from the stress of argument which they impose upon it, then it becomes our duty carefully to examine the precedents in case of expulsion to ascertain the nature of that constitutional power vested in both Houses of Congress and the class of offenses upon which it may operate, and what, if any, distinction there may be between the consequences following a judgment in impeachment and a vote of expulsion.

That committee thereupon assert "it has never been contended that the power to impeach for any causes enumerated," *i. e.*, treason, bribery, or other high crimes, "was intended to be restricted to those which might occur after appointment to civil office."

Your committee have been unable, from their investigation, to find warrant for this assertion. We have already shown that all the precedents under the Constitution show impeachments to have been for acts done in the very office from which the accused was sought to be removed. We are unaware that there is any case to the contrary in the later decisions in England, or in any States of the Union, and we grieve that the committee, for whom we have so high a respect, have not seen fit to give authority to the House for this so grave and important a proposition of constitutional laws.

Knowing the accurate learning and exhaustive research of that committee, and the long time which they have had this matter under consideration, the Committee on the Judiciary feel quite sure that if any such case in precedent could have been found it would have been stated in support of a proposition of such moment. In the more limited knowledge of your committee, and in the little time they have had to give to this investigation, we have been unable to find any authority or precedents for so broad an assertion of unquestioned power. And your committee take leave to suppose that the immense labors of the committee on the Credit Mobilier in their investigation alone must have permitted them to enunciate a proposition for which it would seem to be difficult to find either precedents or authority.

And we are emboldened in our opinion upon this point, because we do not fail to observe that the learned committee in the analogy which they draw between impeachment and expulsion have not adverted to, but have overlooked in their exposition of the subject the very wide distinction of the effect of proceedings by impeachment and the effect of expulsion of a member for whatever cause.

That constitutional distinction is this: That impeachment may disqualify the impeached from ever after holding office, while expulsion never has been held, except under a statute of England long since fallen into disuse, by which alone the case of Wilkes was for a time attempted to be justified in a limited degree to have such effect. The expelled member may be, and has been, frequently, re-elected after expulsion. The impeached officer never can be elected or appointed to office, after impeachment and a full judgment upon the finding of the fact.

Considering therefore that that committee have overlooked so important a difference, we are permitted to believe that they may not have carefully observed other differences between expulsion and impeachment, which will show the analogy which they have drawn in their argument may aid our own conclusion. Your committee feel that this analogy, whatever it may be, strengthens our argument that an officer may not be impeached for an act done before his election to office, because before we heard the report of the learned committee on

Credit Mobilier we had not been led to doubt that no man could or ought to be expelled for any act done by him before his election as a member of Congress.

Our first reason for not doubting upon this point, which we desire to recall to the House and the country, is the plain words of the Constitution, which seem to us clearly to indicate that the power of expulsion is a protective, not a punitive provision of the Constitution. It is found in section 5 of the first article:

> Each House may determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two-thirds, expel a member.

Expel for what? For disorderly behavior, *i. e.*, for that behavior which renders him unfit to do his duties as a member of the House, or that present condition of mind or body which makes it unsafe or improper for the House to have him in it? We submit, with some confidence, that the House might expel an insane man, because it might not be safe or convenient for the House to have him within the legislative hall. They can also clearly expel a man for disorderly proceedings in the body, or for such acts outside of the body as render it at the time manifestly improper for him to be in the House. But your committee are constrained to believe that the power of expelling a member for some alleged crime, committed it may be years before his election, is not within the constitutional prerogative of the House.

We do not overlook the argument presented by the learned committee, upon whose report we are observing, by the phrase:

> Every consideration of justice and sound policy would seem to require that the public interests be secured and those chosen to be their guardians be free from pollution of high crimes, no matter at what time that pollution had attached.

But the answer seems to us an obvious one that the Constitution has given to the House of Representatives no constitutional power over such considerations of "justice and sound policy" as a qualification in representation. On the contrary, the Constitution has given this power to another and higher tribunal, to wit, the constituency of the member. Every intendment of our form of government would seem to point to that. This is a Government of the people, which assumes that they are the best judges of the social, intellectual, and moral qualifications of their Representatives whom they are to choose, not anybody else to choose for them; and we, therefore, find in the people's Constitution and frame of government they have, in the very first article and second section, determined that "the House of Representatives shall be composed of members chosen every second year by the people of the States," not by Representatives chosen for them at the will and caprice of members of Congress from other States according to the notions of the "necessities of self-preservation and self-purification" which might suggest themselves to the reason or caprice of the members from other States in any process of purgation or purification which two-thirds of the members of either House may "deem necessary" to prevent bringing "the body into contempt and disgrace."

Your committee are further emboldened to take this view of this very important constitutional question, because they find that in the same section it is provided what shall be the qualifications of a Representative of the people, so chosen by the people themselves. On this it is solemnly enacted, unchanged during the life of the nation, that "No person shall be a Representative who shall not have attained the age of twenty-five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State in which he shall be chosen."

Your committee believe that there is no man or body of men who can add to or take away one jot or tittle of these qualifications. The enumeration of such specified qualifications necessarily excludes every other. It is respectfully submitted that it is nowhere provided that the House of Representatives shall consist of such members as are left after the process of "purgation and purification" shall have been exercised for the public safety, such as may be "deemed necessary" by any majority of the House. The power itself seems to us too dangerous, the claim of power too exaggerated, to be confided in any body of men; and, therefore, most wisely retained in the people themselves, by the express words of the Constitution.

One need not have a lively imagination to divine how, if that power of "purgation and purification" can be used as a two-third majority shall "deem the public safety requires" so as to absorb all other powers or branches of the Government, and it may be the rights and powers of the people themselves. For example, the election of President of the United States in certain contingencies, which have more than once arisen in our history, is to be exercised by the House of Representatives voting by States; and in one of those very instances—in the case of the contest between Jefferson and Burr—a single Representative in a single State determined that contest. How easy to change that vote, and the election of the President of the whole people, by the use of this process of "purgation and purification," under the plea of the public safety, which has been the foundation of the throne of every tyrant and the justification of every usurper and dictator!

We can foresee also this possible, nay, probable, danger from the "purgation," by a majority of the House of the Representatives from Nebraska, Nevada, Kansas, Oregon, Florida, and Delaware, on the ground that has been sometimes stated here by Representatives from the larger States, that they are "rotten boroughs," too small to be made States, and thus the vote of six States out of the thirty-seven would be thrown out in a presidential election by States; and this claim that those States are too small to be States would furnish a ready excuse when such an excuse is desired to accomplish a political end, to say nothing of the use of this power to expel a single member from one or more of the balanced States where one majority in the delegation would turn the election of a President and Vice-President, under the claim of purgation and purification—for public safety.

And the learned committee seems to us to have been equally unfortunate in finding precedents for this claim of power of expulsion of a member for acts done before his election, and as a member of the House.

The committee have cited but two precedents in that behalf—one the case of John Smith, a member of the Senate from the State of Ohio, from which case they quote only the somewhat rhetorical report of Mr. Adams, in part these words:

> The power of expelling a member for misconduct results on the principles of common sense, from the interests of the nations that the high trust of legislation shall be invested in pure hands.

The case of Smith, however, was an allegation that, while a Senator, during the very term at which he was held to answer, he had been complicated in the alleged treason of Aaron Burr. It is difficult to see how that can be cited as authority, as to a crime committed before the accused was a member. That case was not before the Senate. It is observable that the learned committee forget to cite the resolution of ex-

pulsion which concludes Mr. Adams's report, and shows the facts in the following words:

That John Smith, a Senator from the State of Ohio, by participation in the conspiracy of Aaron Burr against the peace, union, and liberties of the people of the United States, has been guilty of conduct incompatible with his duty and station as a Senator of the United States, and that he be, and therefore is, expelled from the Senate of the United States.

And further, during the discussion no Senator claimed that Mr. Smith could have been expelled for any act done by him before his election. But, on the contrary, Mr. Hillhouse, the able Senator from Connecticut, characterizes the report of Mr. Adams as "one containing principles which I can never sanction by my vote; principles which would plant a dagger in the bosom of civil liberty."

We also take leave to suggest that the learned committee might have given, in their report, a little more prominence to the case of Humphrey Marshall, of Kentucky, which they only casually mention, wherein the same Senate refused to take cognizance of the charge of perjury as a ground of expulsion, because the imputed offense had been committed before the election of the Senator.

In their only other citation your committee are happy to find that they draw their inspiration from the same source with the learned committee on Credit Mobilier, which cites the case of John Wilkes as establishing the doctrine that the House of Commons, of England, by the common lex parliamentaria, may expel a member for acts committed before he was a member of that house. Your committee had come to an entirely different conclusion upon this case. They had supposed, if anything was settled in the case of John Wilkes, it was that such act of expulsion was "contrary to the liberties of the Commons of England." It certainly cannot be held an authority for the proposition that a member may be expelled for acts done before he was a member of the body, because the several acts of John Wilkes for which he was expelled were done after his election to that same session of Parliament to which he was elected and re-elected. But *à fortiori*, because Wilkes was sustained by every lover of the principles of freedom, and the acts of the House of Commons in his case have always been cited as an instance of the tyranny of parliamentary bodies.

Your committee had believed, until they read this report, that since the vote of the House of Commons, under the lead of the liberals of England, had blotted out the offensive record (by ordering it to be expunged from the journal, "as subversive of the rights of the whole body of the electors of this kingdom") of the proceedings of a body led by the same ministry who made war upon American rights and liberties and conducted the aggressions which produced the American Revolution, the conduct of such a ministry would never find a defender, much less in a committee of freemen, to cite it as a precedent for the action of a constitutional representative body of a free people.

Your committee believed and still do believe, and therefore aver, that the case of Wilkes was the cause of the limitations upon the qualifications of members, put into our Constitution, and the guarded power of expulsion therein given to both Houses. The case of Wilkes was as familiar to our revolutionary fathers when they framed our Government as Credit Mobilier is to us. They had seen and felt the effects of parliamentary oppression, and they guarded themselves sedulously from it in their constitution of Government.

Nor are your committee shaken in our opinion by the reasoning of that report, that the difference of Wilkes's case, to distinguish it from the case they had under advisement is, that Wilkes's was only a case of a political offense, to wit, libel, and therefore not *malum in se*; because we are brought to contemplate, when that distinction is raised, what might be the condition of some members of the present House of Representatives, in the opinion of other members of this House, and probably some one of that learned committee itself. It will be conceded that there is no higher crime than treason known to a government of laws. It has always been visited by the direst punishment, and in the country from which we received the body of our laws the traitor was not allowed to be buried. Dismembered and disemboweled, he saw his entrails burned before his eyes while yet living, and his head was put upon a pike, in its decay grinning terror to like evil-doers, and his blood was held attainted to the latest generation, so that no pure drop could descend to his posterity. Yet in the present House of Representatives there are men of whom some of the other members may be of opinion that they committed treason against our Government some ten or twelve years since, and might claim that one cause of the election of some of them was that their constituencies knew that they had committed such treason, sympathized with them in it, and chose them as their representatives because of that sympathy; and we of the House of Representatives would be on our part obliged to admit that, in order that they might be our associates, we removed constitutional disabilities to permit them to sit with us by virtue of that election. Therefore, for this reason, your committee might find itself compelled to dissent from the proposition stated in that report, that "it is hardly a case to be supposed that any constituency, with a full knowledge of a man's guilt or moral turpitude, will elect him." That depends upon the definition which the constituency gives to the act done as to its guilty quality.

We must remember that this power of expulsion has been most frequently used for political purposes, and may be so again. Not many years ago the House of Representatives witnessed a motion for expulsion of the "old man eloquent," once a President of the United States, as "tainted with crime," because he presented a petition for the abolition of slavery. Nay, more, a movement for expulsion, changed to a vote of censure, passed by 125 to 60, against Joshua R. Giddings, of Ohio, as a tainted man, unfit for association with his fellow-members, because he presented a series of resolutions declaring that some African negroes, who, having endured the horrors of the middle passage in a slave-ship, had the natural and inherent right to rise upon their captors and oppressors at sea, and regain their liberty taken from them by fraud and force.

No life can be so blameless, no services so exalted, no action so just as always to guard the man against the blasts of passion and prejudice which sometimes sweep over a deliberative assembly.

What, then, becomes of the doctrine put forward in that report, that the right of this process of purgation and purification must be maintained to prevent those tainted by crime from sitting with us; or, as expressed in that report, "that it seems to us absurd to say an election has given a man political absolution for an offense which was unknown to his constituents?"

The offense of which we have spoken was known, not only to the constituents, but to the House, but an election has followed, notwithstanding.

But the learned committee further declare, as a reason why no fixed rule of law should be adopted by the House in cases of expulsion, as

follows: "That no rule, however narrow and limited," can prevent "the exercise of this power of purgation and purification, if two-thirds of the House shall see fit to expel a man because they do not like his religious or political principles or without any reason at all. They have no power, and there is no remedy, except by an appeal to the people."

The minds of your committee very much reluct at such a doctine. We deny the power, that is, the legal power; while we admit the brute force. We deny the right, and there can be no legal power where there is no legal right.

It is for us now to make the precedent that shall restrain bad men in bad times from an exercise of an assumed wrongful power. The only safety, either for the constituency or the Representative, must be found in a steady line of precedents guiding the action of the House in the matter of expulsion, founded on principles of justice and legal rights carefully restrained within the limits of constitutional law. Nay, "who shall vote as a precedent for any exercise of this claimed power of purification and purgation?" May not the next House of Representatives, composed in two-thirds of its members of republicans of the most pronounced type, under a precedent established by the report of the learned committee, if sanctioned by the House, come back at the next session and undertake the work of purgation and purification from the House of men whom they may believe committed treasonable acts ten years ago? And they will find no legal impediment; for pardon or removal of disabilities does not extend to cases of impeachment by express constitutional exception, and the learned committee insist that the causes justifying impeachment and expulsion are inseparable. Who, then, will dare assert that for offenses committed ten years ago, yea, five years, or one year ago, before the election of a member, the House has power to expel at its caprice, under a constitutional provision which declares "the House may punish its members for disorderly behavior, and, with the concurrence of two-thirds, expel a member?"

The case of Matteson, cited by the learned committee, it seems to your committee is peculiarly unfortunate to sustain the postulate. But Matteson's case is in so many respects like that under consideration, that it deserves more than the passing notice that the report gives it.

Matteson had been engaged in a case of bribery, and had been re-elected; the charge had been made during the re-election and had been denied; and in the last days of the short session, before he was to take his seat in the next House, a resolution of expulsion was brought against him for the crime of being engaged in bribery while a member of, and for slandering the then present House. Before a vote was taken upon the resolutions, he sent in his resignation, so that the resolution of expulsion was laid upon the table, while the other two resolutions finding him guilty of the crime were passed.

At the session of the next Congress another resolution of expulsion was introduced for the same cause, and in the same words, but was antagonized because the act was done while Matteson was a member of a former Congress, and after the fullest discussion, was laid on the table by the decisive vote of 90 ayes to 69 nays, in a House where there were such parliamentarians as Campbell, Covode, Winter Davis, Dawes, Farnsworth, Giddings, Grow, Harlan, Olin, Pike, Seward, John Sherman, Wade, Walbridge, and Washburn, voting in the affirmative, in a case where the guilty act was proved and admitted. So that we dissent from the conclusion of the learned committee, that this case of Matteson fur-

nishes no precedent because, as "the whole subject was ended by being laid on the table," it is impossible to say what was decided by the House.

We find ourselves, therefore, from the entire lack of precedents, and upon the reason of the case, compelled to differ in the fullest manner from the doctrine of that report in regard to purification and purgation, and because, among other reasons, your committee cannot well see how the fact of the knowledge of the constituency, that their representative has heretofore committed a crime, can prevent his "presence bringing odium and reproach upon the body of which he is a member," which would attach to it because of the same crimes, if his constituents did not know them at the time of his election. It seems to us the impure man would need purification and purgation inequal degree irrespective of the knowledge of his constituents.

Our opinion upon the whole matter, therefore, is that the right of representation is the right of the constituency, and not that of the representative; and so long as he does nothing which is disorderly or renders him unfit to be in the House while a member thereof, that except for the safety of the House, or the members thereof, or for its own protection, the House has no right or legal constitutional jurisdiction or power to expel the member. We see no constitutional warrant for his expulsion upon any other ground, and especially not upon the ground of purgation and purification as set forth in the report of the learned committee, against which your committee must earnestly and respectfully protest.

Your committee do not feel themselves called upon to discuss in this connection the legal consequences following from the doctrine of continuation of the offense in a man once receiving a bribe, because if it may be be laid with a *continuando* at all the offense, it must continue to affect him ever after, and therefore, having once taken a bribe, he is always deemed to be under the effect of it, for the reason that we are inclined to believe that at some time the effect of the bribe might have spent its force, and it would hardly be a safe rule of legal action to undertake to determine whether that would not happen in five years and might happen in ten. .Certainly such considerations would not apply to one who had given a bribe, because the virtue thereof all went out of him when he parted with his money, and there was nothing left continuing in him save the loss of it.

For the reasons so hastily stated, and many more which might be adduced, your committee conclude that both the impeaching power bestowed upon the two Houses by the Constitution, and the power of expulsion, are remedial only, and not punitive, so as to extend to all crimes at all times, and are not to be used in any constitutional sense or right for the purpose of punishing any man for a crime committed before he becomes a member of the House, or in case of a civil officer, as just cause of impeachment; but we agree the analogy stated by the learned committee on Credit Mobilier is in so far perfect. Both are alike remedial, neither punitive.

We have, therefore, come to the opinion that, so far as receiving and holding an interest in the Credit Mobilier stock is concerned, there is nothing in the testimony submitted to us which would warrant impeachment in the case of the Vice-President.

In view of all the circumstances, your committee do not deem that we are now required to make any further inquiry, under the resolution referred to us, and therefore report back the same, and ask to be dis-

charged from the further consideration thereof, and that the same lie on the table.

JNO. A. BINGHAM.
BENJ. F. BUTLER.
CHAS. A. ELDREDGE.
J. A. PETERS.
L. D. SHOEMAKER.
D. W. VOORHEES.

I dissent from the report, but I concur in the recommendation to discharge the committee for want of time to make further investigation, and for the reasons expressed in views submitted herewith.

CLARKSON N. POTTER.

FEBRUARY 24, 1873.

I concur in the conclusions of the foregoing report so far as the same have reference to the question of impeachment. I do not feel called upon, by the resolution submitted by the House to this committee, to express any opinion in regard to the power of the House to expel for acts committed before election, and express no opinion in relation thereto.

J. M. WILSON.

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